

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

FROM Paul Currier, Watershed Management
Bureau Administrator

Date May 25, 2010

Offices

Dept of Environmental Services
Water Division

SUBJECT Proposed Changes to definitions related to
“surface waters” definitions in RSA 485-A

TO Water Quality Standards Advisory
Committee / Definitions working group

SITUATION

At its first meeting on May 10, 2010 the Surface Water Definitions Working Group concurred with developing consistent definitions related to “surface waters” among RSA 485-A, RSA 483-A, and the Clean Water Act, and DES was tasked to provide more information. Subsequently, DES water program and legal staff have met, with input from the Department of Justice. After consultations, we have prepared a draft proposal which we believe creates consistent definitions. Basically, we propose that RSA 485-A definitions be modified as recommended below to be consistent with RSA 482-A. These definitions would also provide consistency with the Clean Water Act in that they include all “waters of the US” as well as waters that may have no “significant nexus” to traditional navigable waters.

PROPOSED CHANGES TO RSA 485-A

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

PRIMARY SOURCE indicates the source of the language in wetlands statutes and rules

New Paragraph; Definitions; Waters of the State. Amend RSA 485-A:2 by inserting after paragraph XIX the following new paragraph:

XIX-a. “Waters of the state” or “waters” means tidal waters, fresh waters, and wetlands.

New Paragraph; Definitions; Tidal Waters. Amend RSA 485-A:2 by inserting after paragraph XIV the following new paragraph:

XIV-a. “Tidal waters” means wherever the tide ebbs and flows.

PRIMARY SOURCE: RSA 485-A:4

New Paragraph; Definitions; Fresh Waters. Amend RSA 485-A:2 by inserting after paragraph IV the following new paragraph:

IV-a. “Fresh waters” means wherever fresh water flows or stands during any season of the year

PRIMARY SOURCE: RSA 485-A:4

New Paragraph; Definitions; Wetlands. Amend RSA 485-A:2 by inserting after paragraph XVI-a the following new paragraph:

XVI-b. “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

PRIMARY SOURCE: From RSA 482-A:2 which is consistent with “waters of the US in 40CFR 230.3

Definitions; Surface Waters. Amend RSA 485-A:2, XIV to read as follows:

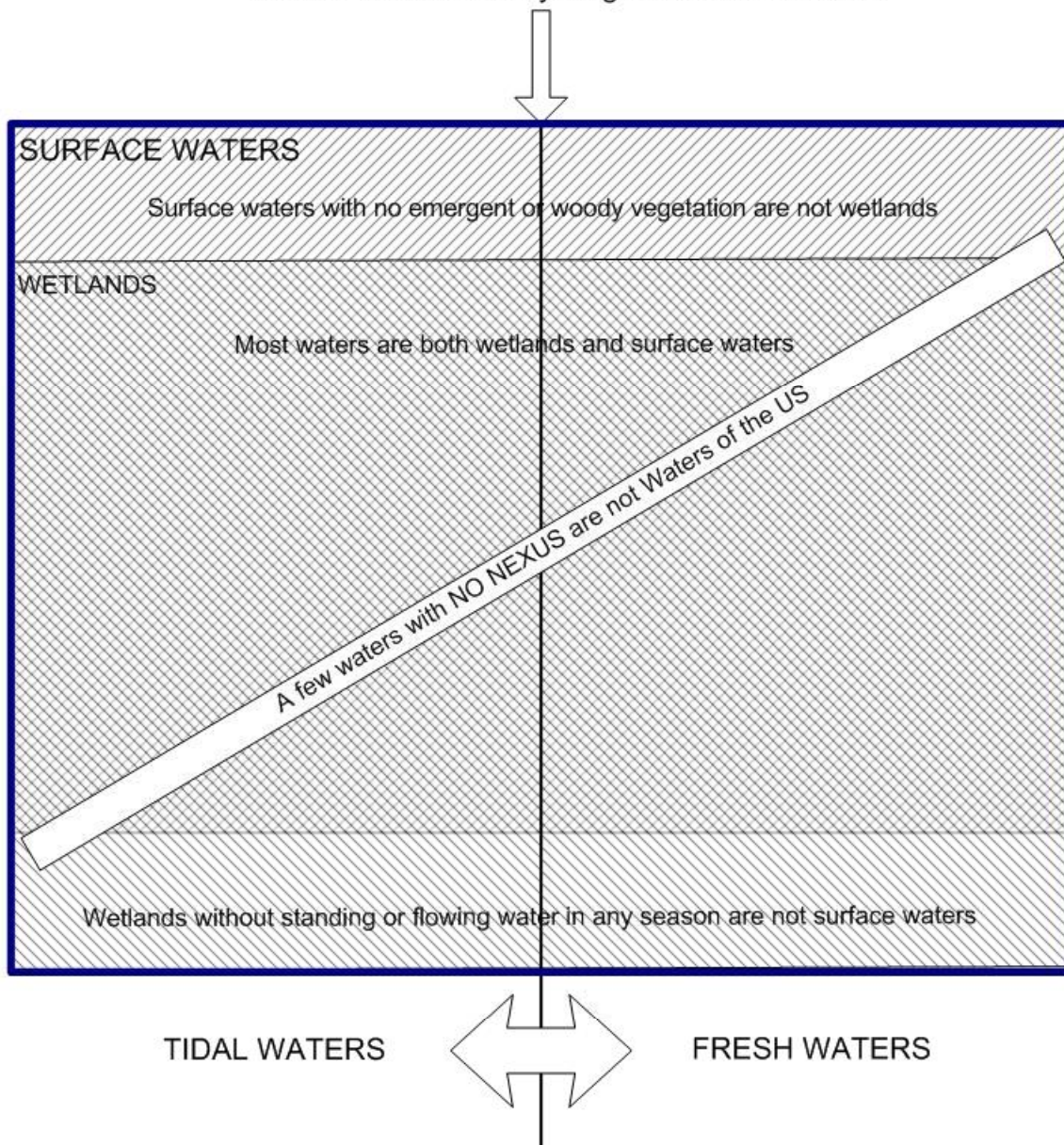
XIV. “Surface waters [~~of the state]~~” means [~~perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial.]~~ ***fresh waters and tidal waters, including but not limited to rivers, streams, lakes, ponds, impoundments (what is this intended to include? D basins, wash ponds, stormwater control ponds are exempt under 482-A. Suggest that it be eliminated or clarified – cga) and tidal waters. (redundant – cga)***

PRIMARY SOURCE: Wetlands rules Env-Wt 101.91

DISCUSSION

A preliminary check of RSA 485-A shows that wherever the words “surface waters” are used in the existing statute, they should be changed to “waters” to be consistent with the new definitions. This involves deleting the word “surface” in approximately 33 places in RSA 485-A. A preliminary check of the wetlands statute RSA 482-A, and other water-related statutes does not reveal any changes needed. Subsequent to enactment of the new statutory definitions, some rule changes to Surface Water Quality Regulations (Env-Wq 1700) would be needed.

"Waters" includes everything inside the blue box



"Waters of the state or waters" means tidal waters, fresh waters, and wetlands.

"Tidal waters" means wherever the tide ebbs and flows [From RSA 482-A:4]

"Fresh waters" means wherever fresh water flows or stands during any season of the year [From RSA 482-A:4]

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. [From RSA 482-A:2]

"Surface waters" means fresh waters and tidal waters, including but not limited to rivers, streams, lakes, ponds, impoundments and tidal waters. [from Env-Wt 101.91]